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EDITORIAL

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AMERICAN JUDICATURE SOCIETY
Ann Arbor, Michigan

THE AMERICAN JUDICATURE SOCIETY

To Promote the Efficient Administration of Justice

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JOURNAL OF THE AMERICAN JUDICATURE SOCIETY

Vol. 32, No. 1 · GLENN R. WINTERS, Editor · June, 1948

How Does Your City Compare?

THE JOURNAL IS PLEASED to present in this issue Charles O. Porter's timely and constructive survey of the administration of justice in Hamilton County, Ohio. Although Mr. Porter does not say so in this version of it, Cincinnati is not, as one might be led to suppose, a horrible example among American cities in this regard. Its courts and bar compare favorably with the best of the rest of the country. This very fact makes this report worth-while reading in other states and cities. The nine defects here mentioned could doubtless be matched by nine or a dozen similar details in need of correction in any other community.

An interesting sidelight was the reaction of the Cincinnati press, to which reference is made in the author's footnote. The JOURNAL has been gratified to observe, as a rule, the newspapers of most cities vigorously supporting measures for the improvement of the administration of justice. For reasons which we have been given to understand may involve other matters than the actual merits of the subject-matter, the press of that city gave the Porter report a cool reception, and the *Enquirer* went out of its way to scoff at it. Porter was belittled because of his youth (his crew haircut was mentioned), and the fact that he was a mere law student. The report, the *Enquirer* columnist suggested, was but a school essay after all, and if they paid any attention to such writings there would be little time left for the transaction of business. Porter's sponsorship by the Good Government League detracts somewhat from the aptness of that criticism, but in any event, ideas are entitled to a hearing on their intrinsic merits whatever their source, and the truth is the truth, whether spoken by sage, stripling or ouija board.

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A BAR CONVENTION PROGRAM that does not feature one or more judicial administration topics is not complete. It is true that the primary interest of most lawyers, along with everybody else, is "bread and butter," but it is also true that bread and butter occupies nine tenths of their attention at home, and one of the things they expect of a convention is a glimpse into some different aspects of their work and professional life. The same is true of the local bar association's weekly or monthly luncheon or dinner programs. The American Judicature Society will gladly recommend a suitable speaker for any meeting on any subject connected with the administration of justice.

THE JOURNAL constantly receives requests for permission to reprint its articles in other publications. Such permission is always granted, but need not be specifically asked, since for years every issue has carried at the bottom of the inside front cover the following line: "Permission is hereby given to reprint, with credit, from this or any other issue." We would, of course, be interested to known when something is reprinted, and would appreciate the marked copies which are not always sent.

THE 1948 ANNUAL MEETING of the American Judicature Society will be held in Seattle, Washington, on Wednesday, September 8. It will be a luncheon meeting in the University Room of the Benjamin Franklin Hotel. Further details will be announced in the August JOURNAL. All members and friends of the Society are welcome.

IN DECEMBER, 1945, the JOURNAL published John H. Flanigan's essay "The Citizen as a Juror," which won first prize in the contest conducted that year by the Committee on American Citizenship of the American Bar Association. Thereafter the Committee published in booklet form eighteen other essays on the same subject submitted in the contest, including one by David A. Simmons, chairman of the committee, designated as a "committee draft," and serving as a composite of the best of all ideas submitted, and written without regard to the space limit to which the contestants were subjected. Following is the "committee draft," which was entitled "The Juror's Creed."

The booklet containing the collection of essays may be secured from the American Bar Association, 1140 N. Dearborn St., Chicago 10, Illinois. If there is a demand for them, the JOURNAL will arrange to supply reprints of "The Juror's Creed" as here published, or the Flanigan essay, or both, in any quantity, for distribution to jurors or for any other use, at actual cost prices.

The Juror's Creed

I am a juror. This building in which I sit is a courthouse. It is also a temple of justice if the judge and I properly perform our sacred function.

My right to serve as a juror was purchased for me by the blood and agony of my forefathers who wrested this precious right from tyrants.

Under our system of law no person can be deprived of life, liberty or property without the consent of a jury of his fellow citizens. This is the very essence of freedom.

I recognize the importance of the court as an agency to settle civil disputes and to punish criminal acts. By my participation I preserve and perpetuate democratic processes.

Trial by jury is a basic right guaranteed to me and to my fellows. All who seek their day in court are entitled to a fair hearing, and as a juror I will see that they get it from me.

I will welcome the opportunity to serve as a juror and regard it as the most important civil function I have to perform. I will ask to be excused only in case of real emergency.

Chosen first by lot and then by consent of the parties, I recognize that I represent this community in settling this controversy.

I do not believe that justice is served when competent citizens evade jury service and leave it to the indigent and loiterers about the courthouse.

My oath as a juror imposes upon me a sacred obligation which I will neither avoid nor shirk.

On my oath I will well and truly try each case submitted to me, and a true verdict render according to the law given me by the judge and the evidence produced at the trial, to the best of my ability, without fear, favor, or hope of reward.

Before sitting in a particular case I will frankly disclose to court and counsel any knowledge of the facts, any relationship to parties, and any bias or prejudice I may have against the parties, participants, cause or the law on which it is based.

I will listen attentively, patiently, with tolerance and understanding to all of the testimony, instructions and arguments, and will withhold my decision until all the evidence has been introduced and the jury instructed on the law.

With a patient and impartial mind I will carefully weigh the evidence in search only for the truth.

I am the judge of the weight to be given the testimony.

I will consider only the evidence introduced at the trial as it has been admitted by the judge as being competent under rules representing the experience of mankind in the search for truth.

I will consider all the evidence of both sides fully and fairly, and will search for the truth without regard to wealth or poverty, friendship or enmity, of any party or witnesses.

I am the exclusive judge of the credibility of the witness. In testing the truth or falsity of testimony I will consider the demeanor of the witness, his reputation for truth and veracity when placed in issue, and the reasonableness of contradictory evidence.

I will remember that I am not trying the lawyers, the judge, the witesses, or even the parties, but only the issues of fact in the case.

I will follow the instructions of the judge as to the applicable rules of law, regardless of my opinion of what the law ought to be.

In deliberating with the other jurors I will express my views frankly and urge the others to do the same.

The opinions of my fellows are entitled to my respectful consideration. Their life experiences are probably as broad as mine and I will recognize their competence in helping solve our common problem.

When convinced of the correctness of my views I will adhere to them, but I will be open-minded and remember the desirability of reaching a unanimous verdict.

Whether my verdict is for friend or foe, rich or poor, is alike immaterial. What is important is that it be just and speak my honest conviction of the facts.

It will not be based on race, class, creed or color, nor on any other extraneous consideration, but only on the law and evidence.

Mine is a great and heavy responsibility, for my decision may mean the difference between life and death, liberty or chains, poverty or affluence, to some one.

In criminal cases I will remember that while I may be merciful I must be just, both to the defendant and to the community.

In civil cases involving property rights I will remember that it is not my property and, though my decision may bestow it one one or withhold it from the other, my action must be based on the law and the facts, and on nothing else.

Justice, once but a dream, is now a reality when I perform my full duty as a juror. No act of mine shall bring our system of liberty under law into disrepute. If this system fails it will not because of me.

As a juror I understand the importance of my functions and I will perform it.

The Grand Jury—Use It or Lose it

A. VERE SHAW

"The administration of the criminal law must in the last analysis be in the hands of the community itself. This is essential, first in order that crime may not escape punishment by reason of the incompetence or corruption of public officers, and, second, in order that the innocent and the free may not be subjected to illegal compulsion through the encroachment of governmental power. That objective is just as important and desirable today as it was a thousand years ago."

FAR DOWN in the back of our heads, we human beings have a small section of brain known as the medulla oblongata, which the anatomists tell us is a vestigial eye. Once upon a time, it seems, with an eye in the back of our heads, we were able to see more than we can today, particularly to see what was behind us. When humanity crawled up out of the slime, stood on its two legs and learned to run forward, we used our two front eyes so much that we had little or no use for the rear blinker. Thereupon, it gradually closed and disappeared, ages ago.

So it happens, when useful things are not used. They dry up and disappear. In these modern times of fast and furious traffic on the horizontal, skyscrapers and flying ships in the air, and fur, silk and nylon displayed all around us, we could use that third eye to good advantage.

Eternal vigilance is the price of safety; that is, effective vigilance with power, tools and intelligence behind it. To keep our country free, and a constitutional republic, we have learned that occasionally we must fight for it. We must constantly be on the alert for its enemies. We must stand up for, we must advertise if you please, the meaning, the soundness, the strength of our institutions.

One important bulwark of freedom, as we know and love freedom in this country, is the Grand Jury. For a thousand years the Grand Jury has served well both as a brake on crime against society, and as a brake on oppression by rulers, governors and government officials. Yet in some jurisdictions the grand jury institution has been almost obliterated. The people must have forgotten their powers and their responsibilities. Unless we exercise it here and exercise it vigorously, the Grand Jury gradually will dry up and disappear, and with it our freedom. The greatest menace to freedom, to the institutions of freedom, is an inert people.

What is the Grand Jury? What is its objective? Is that objective still a desirable one today? You know the answers to those questions, but a brief review will do no harm. The Grand Jury is an independent investigatory body. It is based on the sound conviction that the administration of the criminal law must in the last analysis be in the hands of the community itself. This is essential, first, in order that crime may not escape punishment by reason of the incompetence or corruption of public officers; and second, in order that the innocent and the free may not be subjected to illegal compulsion through the encroachment of governmental power. That objective is just as important and desirable today as it was a thousand years ago. The Grand Jury consults no judgment but its own, has no legal responsibility, and is morally responsible only to the community and to its own conscience. The Grand Jury, not the District Attorney, is charged by statute with the duty of inquiry into crime, that is, final inquiry and final responsibility. Except in a few cases, as where indictment has been waived, the Grand Jury, not the judge or the District Attorney, determines whether or not a person shall be tried for a crime. (In this talk I shall always be referring to federal, not state, practice.)

Originally the members of the Grand Jury compiled their own facts and brought in an indictment or "no bill" on their own knowledge without the help of the prosecutor. But times have changed. Today we need specialists to investigate crimes. The work is too great, too complicated, too time-consuming for citizens who serve on juries at nominal fees. So today

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Address by the president of the Federal Grand Jury Association for the Southern District of New York at its recent annual meeting.

we have District Attorneys to assist and advise Grand Juries, and of course to prosecute. However, this does not relieve the individual grand juror of responsibility for reporting to his fellow jurors any crimes which he believes have been committed in the District and which the D. A. may or may not call to the jury's attention.

What happens today in the typical grand jury room? For a month, two hours a day, the jury hears cases presented by the D. A.'s office. It returns indictments, occasionally no indictment. It hears many narcotic, postal inspection and other routine cases which usually are conclusive and really a waste of important time, cases which should be tried upon information or waiver of indictment without having to come before a Grand Jury at all. After a month of nodding assents, occasionally a dissent, to the findings of the D. A., the jury is discharged. It has never investigated a case not presented by the D. A. It has never instigated a case on its own.

In the New York Times of February 3, 1947, appeared this headline "M'Gohey reports 99.1% convictions." The text starts out:

"A nearly perfect record in the prosecution of criminal cases in 1946 was shown yesterday in the annual report of John F. X. McGohey, United States District Attorney for the Southern District of New York. Convictions were obtained in 99.1% of the 1,316 criminal cases prosecuted. . . . The crimes consisted chiefly of mail frauds, security frauds, counterfeiting, illegal narcotic transactions, hijacking, white slavery, tax evasion and black market deals."

Yes, it was a nearly perfect record for the D. A., for which he deserves great credit. Those cases were not all easy. But how nearly perfect a record was it for the Grand Juries involved? I wonder if some additional indictments were not justified, the prosecution of which might have been difficult and unsuccessful, but nonetheless of distinct value to the community in discouraging crime. Even though no indictments are handed down, the therapeutic value of a rigorous grand jury investigation is enormous.

The Grand Jury should stand on its feet and be ever watchful of the behavior of public officials, especially those charged with the administration of justice. This is the citizens' means of checking on political appointees. For fourteen years recently all our federal judges, all our federal district attorneys and many other federal officials were appointed by one man. That was not good. Public officials are still being appointed by a man of the same party. And if another party had been in power for the past sixteen years or for the past two years, not a word I have said or shall say should be changed.

Discussing on one hand the official who has sworn to uphold our constitution, but sells protection and preferment for votes, and on the other hand the communist who has sworn to destroy our constitution, Paul Gallico recently wrote:

"We the people are assailed on all sides. Where speaks the voice of truth and reason? Who are the patriots guarding our heritage? Where are they? Must we who truly love this nation face our dilemma alone?

Is there no way of protecting ourselves by law, by reason and by patriotism within the framework of the American ideal from this bitter two-sided onslaught against our civilization?"

Members of the Grand Jury panel, there is a way of protecting ourselves—the Grand Jury way.

You read the newspaper. You know what goes on in the community. You are intelligent men and women, qualified for grand jury service. You love your country and its freedom. Then you must do more during your jury term than just sit, listen, and discuss for two hours a day.

Did you ever hear of the millionaire draft dodger, who alledgedly falsified passports and was recently sent to Lewisburg Penitentiary for only two and one-half years, which can possibly be shortened to ten months? He got off more easily than poor Grover Bergdoll after the first World War. Why? Why did the New York Draft Board change him from a 1A to a 2B rating after a presidential appeal board had affirmed his 1A rating? Why wasn't some investigation made as to how this man spent his money?

Did you ever hear of the Logan Act, a law of our land which forbids a private citizen to participate in diplomatic relations with a foreign government except by official permission? That law in my opinion has been violated during the past year by a private citizen who muddled the diplomatic waters for our State Department. Why has there been no grand jury investigation?

Did you ever hear of the Smith-Connally Law which says there must be no work-stoppages while mines are in government possession? Last year while the mines were in government possession a labor leader called a week's work-stoppage and got by with it by labeling it a memorial to the men who lost their lives in the Centralia mine disaster. A day's mourning had always been sufficient before. If with impunity he could call a week of mourning, he could as well have called a month of mourning. Why was he not indicted for that violation of law?

It is not for a district attorney, or the Attorney General of the United States, to decide when a law will or will not be enforced, when a man will or will not be prosecuted for breaking a law. It is their duty to prosecute *all* infractions of *all* Federal laws.

Of that week-long work-stoppage, the New York Times said:

"It is a national shame that one man's pride and craving for power can precipitate such a situation."

I say it is a national shame that some Federal Grand Jury, regardless of the inactivity or even active opposition of the Attorney General, did not notice and have the intestinal fortitude to investigate that occurrence.

You certainly have heard of the wholesale removal of government papers from government files by persons who arrogated to themselves the right and power to determine what papers were and what were not public property. Have you done anything about that? The Attorney General has done nothing and will do nothing about it until he is compelled to. That is where the power of the Grand Jury should take hold. Perhaps no indictment would be justified in this case, but a thorough investigation after the issuance of a "subpoena duces tecum"—bring in the papers—would be a most salutary procedure, would serve as a warning to all officials that we citizens of this country are alert to their behavior.

Judge Murray Hulbert in an outstanding grand jury charge early in 1946 said:

"The work of Grand Juries is of the greatest importance, particularly at this time. It is my feeling that we are in the midst of an almost complete moral breakdown in this country. There has been in my judgment a great lessening in the firmness of character of many of our even believed respectable citizens. It results in my judgment from the merciless pursuit of the almighty dollar, and by many people who feel, as in fact I had one witness testify from the witness stand, that it wasn't wrong in his opinion to do what he did so long as he didn't get caught."

Did you read of the fairy tale episode in the New York City Welfare Department? You contributed to that fairy tale twice, once in your New York taxes and once in your Federal taxes. Did not some loyal citizen know something about this criminal waste of Welfare funds before the City itself got around to it? Undoubtedly, yes. Why didn't he go to the County District Attorney, or to the Federal District Attorney? These officials are busy, under pressures of one kind or another, and frequently wait for the lid to be blown off. He knew that.

Why didn't this citizen go to the County or to the Federal Grand Jury? The Grand Juries, too, are busy and anxious to finish their terms. They would only have turned his complaint over to the District Attorney for action or for filing, in Bowery parlance, the brush-off. Furthermore, this citizen probably didn't know what a Grand Jury is for, if he knew it existed. He never heard of a Grand Jury making an investigation on a citizen's complaint. He thought a Grand Jury was simply an adjunct of the District Attorney's office or the Court.

Only sporadically do Grand Juries show enough aggression and independence to advertise the institution, and it needs honest advertising. Every citizen should know what a Grand Jury is, does, and what it ought to be and do. He should know it will hear and investigate his grounds for believing a crime has been committed. Unless the Grand Jury is content to be a rubber stamp for the Executive, the Attorney General and the D. A., it had better start educating the public by showing what it can do.

There is a ready road to bad, but none to good, government. The obstacles in the path of effective grand jury work are considerable. It may be that our panel is too small, even too un-representative. Certainly it is too uninformed as regards the grand jury function. Between two and three thousand people, the same people year after year except for replacements due to death and age limit, handle all the grand jury work for this entire Southern District. Other citizens should share the responsibility. I see few jurors in their twenties and thirties. And most all we ever learn about Grand Juries we learn in the jury room. That

is not enough. There should be homework. If jurors were paid ten dollars a day, and they should be, some of our young citizens could then afford the sacrifice required by jury service. So could some taxi drivers and storekeepers. We need better jury foremen. These are all matters to which the Grand Jury Association can put its hand if it approves. It has already rendered conspicuous service along some of these lines, with the able assistance and encouragement of District Judge John C. Knox.

Now what obstacles confront a Grand Jury which wishes to conduct an investigation such as I have shown the need for? You will usually secure the full cooperation of the D. A.'s office. If he cooperates you have all the help and advice you need. If he doesn't, and occasionally he may not, even though he appears to do so, then you are in for real work.

You must study your case, subpoena witnesses, question them and carry through on your own. Part of the preparation of questions, etc. may be done by a committee. You may call on the judges for advice, but not on outsiders with reference to the facts of a particular case. You must honor your oath of secrecy. If the case is a complicated one you may ask the judge for special counsel. He may not provide one because, for one reason, the courts are restricted to a budget appropriation and he may not have the money to pay special counsel. If not, then you are still on your own, but being qualified and intelligent jurors, you can yourselves make a creditable investigation.

A federal statute says that if any grand juror has reason personally to believe a crime has been committed, it is his duty to state his belief and his reasons, not to the D. A., but to his fellow grand jurors. Except in cases involving public elections and voting, the Grand Jury may even exclude the D. A. and his assistants from its session.

Occasionally a crank or a citizen with some picayune affair will offer a case to the jury. There could even be a crank on a Grand Jury. Such cases should be discussed and disposed of reasonably.

In most instances the D. A. should at its beginning be informed of any case you are investigating independently. He may already be preparing that case for a future jury. In this instance you may use your judgment in deciding whether to go ahead or to rely on him to proceed later. If the latter, some members of the jury should take the responsibility of bringing the matter to the attention of a later jury, if, after a reasonable time has elapsed, no action has intervened.

I do not advocate the construction and operation of indictment mills in this country. I believe in the responsibility, the effectiveness, the sanctity and the dignity of the Grand Jury. I would not see those attributes sullied. But I believe Grand Juries should be active, aggressive, independent and prompt in making investigations of all criminal matters. The Grand Jury is of the community, non-partisan, and its objective is protection for *all* the innocent and punishment for *all* the guilty.

While I am president of your Association for a few weeks more, the views I have expressed are not official but simply those of a citizen grand juryman. I probably have shaken considerably the equanimity of some of you grand jurors, which was my purpose. I may have raised the eyebrow, even the temperature, of a D. A. or a judge, if any be present. Unfortunately the audience which really needs this message has not come to this meeting, or is outside this particular judicial district. Let me say this to you. The Grand Jury Panel in this district comprises intelligent, active, qualified jurors to a greater degree than any other Federal district. This is the testimony of the jurists who visit this district. The method of calling and handling Grand Juries in this district, while not perfect, is decidedly efficient and smooth, thanks to the courts and the District Attorneys. That is the testimony of our grand jurors who serve on state and county juries. Our judges, our District Attorney and his assistants, and our jury clerks are busy people, dealing with sordid affairs, and doing a commendable job. That is the testimony of the record. But no matter how good a job we all are doing, a better job is possible and desirable.

The sage Confucius wrote "He who does not resent small injustices will soon be called upon to face giant wrongs". He may well have added that giant wrongs can be righted only at great sacrifice, and if not righted, will lead to slavery and despotism. By the eternal Constitution of the United States, the Grand Jury has the power to maintain and promote justice. In at least one Federal Judicial District of the United States, let us have the will to use that power.

Crime News Encourages Delinquency and Crime

PAUL S. DELAND

Children, being keenly imitative, are greatly influenced by crime news in the press, by crime and horror in the movies, and by fiction that glamorizes the criminal. If crime could be reported without the sensationalism that attracts the immature mind and gives it false values, if it could always be reported so as to point up the sordidness, dullness, stupidity of crime, the child would not try to identify himself with the criminal.—*Judge John J. Connelly, Boston Juvenile Court.*

YEARS OF EXPERIENCE in the newspaper business and observation have convinced me that "Crime News Encourages Delinquency and Crime" to an alarming degree. The widespread publishing of stories falsely glorifying and glamorizing the criminal unquestionably lends encouragement to the motives which underlie the causes for crime.

The dictionary definition of encourage is "to embolden, incite or induce by inspiration and recommendation." While many newspapers do a commendable job, others unfortunately fail in their responsibility and actually "incite and induce" crime by the way they report crime news. They magnify crime news by using large type and placing it in a prominent position on page one. They dress it up vividly, sensationally and artificially. So treated, crime news is made attractive, instead of properly repellent. Such treatment of crime news, by emphasis, suggestion, implication or selection, certainly contributes to crime by making the criminal side seem alluring without even a hint of the dire consequences, the heartaches, disaster, and the inevitable failure of such antisocial activity.

TENDENCY TO GLAMORIZE CRIME

Editors may ostensibly subscribe to the truism that "crime doesn't pay," but the impression their stories leave is contrariwise. Unthinking folks, especially youngsters, are fooled into fascination and emulation by artificially glamorized criminals and get entirely wrong perspectives.

If a writer exposes crime and the criminal, focusing attention on ways of preventing crime, revealing it in its loathsome light, its certainty of failure, then a public service is rendered. But unfortunately too many "clever" wordsmiths dip into their bags of adjectives to paint up in sensational colors what they think is an interesting and thrilling, even if warped, story regardless of its antisocial significance.

Publicity, of course, can be good or bad, desirable or undesirable, but to certain juveniles, especially, there is a hunger to be noticed regardless of the quality of the attention. For that reason the criminal or his misdeameanors ought not to be exploited because of the bad influence on youth.

I recall a story a number of years ago about a 17-year-old high school boy who was tried and sentenced to prison for life for murder. In the news story one paragraph read: "The cool, self-possessed youth, whose jaunty, almost smiling countenance r e m a i n e d with him throughout the court proceedings" etc. It isn't necessary to paint such a picture, which may or may not be true. Such a brazen portrayal is of no benefit to the guilty boy, and sets up a bad example for other youngsters.

How some unimportant criminals are made by the editor to monopolize the front page is illustrated by an eight-column head, one and one-half inches high, which read: "Lone Wolf Shouts in Court." The editor judged that to be the most important event in the day's news in a large metropolitan city. Such undeserved attention to the criminal could mislead an impressionable youth.

A current illustration may be found in the "Black Dahlia" case in which newspapers seized upon such a name and such a case to

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Mr. Deland is managing editor of the *Christian Science Monitor*, a newspaper which since its founding has consistently refused to sensationalize crime or to exploit reader interest in crime. This article was written at the request of the editor of *Federal Probation*, a publication of the United States Department of Juctice, and appears here by permission.

build up a sensation. The effects of such treatment are cited in one newspaper story which said: "A more likely theory was that Mrs. French's murderer might have been inspired or inflamed by the lurid accounts of the mutilation murder of Miss Short."

Another way newspapers encourage crime is to belittle the constituted authorities they should support. Making light of a serious situation doesn't amuse right-thinking people, but it tends to confuse, if not discourage, the whole concept of justice. A recent instance will illustrate many others that give law-breakers and social menaces wrong notions of their predicaments. In this particular case the editor played up on the front page a story with this two-column head:

YOUTHS ASK TO ROLL DICE
FOR TURN IN ELECTRIC CHAIR

Then to give a wholly silly situation further emphasis, the story was set up in black-faced type, which is the editor's way of trying to make important a minor incident, and mislead unthinking people into accepting it as important.

CRIME STORIES SHOULD BE REPORTED WITH SOCIALLY CONSTRUCTIVE AIM

Failure of some newspapers to handle reports on crime in a socially constructive way and the need for reform is indicated by the adoption some years ago by the American Society of Newspaper Editors of a code of ethics. Among other requirements are these: "Responsibility. The right of a newspaper to attract and hold readers is restricted by nothing but considerations of public welfare." Then follows a list of requirements which include "sincerity, truthfulness, accuracy, impartiality, fair play and decency." Under this latter category the code reads as follows:

> A newspaper cannot escape conviction of insincerity if, while professing high moral purpose, it supplies incentive to base conduct, such as are to be found in details of crime and vice, publication of which is not demonstrably for the general good.

Some editors print news about crime to warn the public against criminals and to aid in punishment of crime by informing the public of the work done by the police and the courts in their efforts to curb crime. However, other editors rush in their sob writers, who manufacture over-sentimental stories. They stimulate an undeserved pity for some weak-minded criminals, thereby creating a false sympathy for them instead of helping to bring about their reformation. Instead, every effort should be made to strengthen and support the public officials for their constructive work instead of characterizing policemen as stupid or describing the criminal as clever, smart, or a master mind.

Juveniles especially, and some older persons who are unable to distinguish clearly between right and wrong, are influenced by the unmerited and warped attention that is given to criminals by newspapers which, for instance, give space to photographs of some so-called glamour girl, smiling as she illustrates how she held a gun in robbing a store.

Another inciting illustration is the picture taken of two boys, showing how they pushed a roll of wire fence onto a railroad track out in Indiana, which caused a serious wreck. That picture portrayed them re-enacting the mischief, giving them and all who see it an entirely wrong notion.

Crime should not be made artificially important. It is really a relatively small proportion of life. Even a second's reflection reassures us of that fact. Surely more people are out of jail than in.

But what is more interesting, perhaps, is how the damage is done in the offending crime story. The wrong perspective of conditions given by selection, proportion and relative size of stories is obvious. But the writing up or glamorizing of a story is a mystery not so readily comprehended outside the newspaper office. "Dressing up" the story for circulation purposes is the trick that does most of the damage.

What figures can be made to misrepresent by a clever manipulator is scarcely comparable to the damage a clever rewrite wordsmith can do in making a dull, drab, sordid crime story deceitfully glamorous, thrilling and important by a misuse of words and correlation of ideas.

Take, for instance, the case of some unbalanced sneak thief involved in a crime that lands him in jail. The writer or rewrite man full of imagination, calls into action his highly colored adjectives and paints up the story under the misguided notion that it is what the people want. The unbalanced sneak thief becomes

"a debonair, nattily dressed young gunman who flashed an automatic in approved western style and laughed as he coolly leaped out of the window and made his escape leaving his victim," etc. Now what is a youngster going to think when he reads that with no one nearby to point out the other side?

It is the use of many respectable words and attaching them to such petty crimes and criminals that results in a wrong impression instead of using the right words that would make the crime and criminal properly abhorent and repellent and teach a lesson.

Thus is crime glorified when it really should be condemned. Of course the editor hastens to explain that it is not the province of the news story to condemn, that such judgment is reserved for the editorial page. Right here is practiced a "trick of the trade" for while the writer refrains from condemning, he achieves the opposite effect by glorifying with his choice of words, arrangement and selection of ideas, position, and proportion of space.

Possibly editors do not approve of crime, and they say they print stories to stop it, but motives shine through stories just as truth does through lives and the results are what count most. So if stories of crime—not crime stories—are printed as a help, the antisocial criminal material should be treated in a socially constructive way and not as a vehicle to ride in a torrent of abhorent crime details.

An explanation of how *The Christian Science Monitor* handles this problem may be found in a paragraph taken from an editorial printed in 1933 based on a statement of news policy made in 1909. The paragraph follows:

> Since its founding *The Christian Science Monitor* has consistently refused to sensationalize crime, to exploit admitted reader interest in crime, or to build circulation on any appeal to morbidity. We do, however, assure our readers that to the extent that an informed public opinion must be built upon a faithful knowledge of what the crime problem really is, the Monitor will publish the essential news, without glorifying the criminal and without minimizing the crime.

WHAT OTHERS SAY ABOUT CRIME NEWS

To substantiate my own convictions about crime news based on many years of experience as a writer and newspaper editor, I want to present as convincing testimony a few statements from a number of competent authorities, all of whom agree that printing detailed crime stories does encourage juvenile delinquency and crime.

In a book entitled *Principles of Criminology* Professor Edwin H. Sutherland, of Indiana University, says under the subhead "Newspapers and Crime":

> The American newspapers have been generally and severely criticized for the part they play in relation to crime. The following charges are made against them: First, they promote crime by the constant advertising of crime, by glorifying the criminal leaders and acting as press agents for them, by a jocular method of presenting crime news which takes away the dignity of the court proceedings, and by providing advance information to the public, including the criminals, regarding the plans of the police and prosecutors. Second, they interfere with justice by "trial by newspaper" and by distortion of news. Third, they produce a public panic in regard to crime which makes consistent and sober procedure difficult.

In another book entitled *Criminology*, Albert Morris writes: "The New York Crime Commission recently asked law enforcement officials whether they considered the newspapers 'in any way a factor in the present crime situation'." Here are two replies: A Children's Court Judge said:

> Cases are difficult to determine, but boys in Children's Court frequently refer to notorious criminals and their methods in eulogistic terms indicating they have secured their facts and details from newspaper publicity.

And here's what a Judge of the Court of General Sessions said:

> The hold-up business has been, and is, one of the best advertised businesses in the country. Every morning young men see headlines in the papers showing how jewelry, silks, payrolls, etc., worth many thousands of dollars, have been secured apparently safely and in a few minutes . . . Several defendants, at the time of sentence, in answer to my inquiry, have stated that they committed the crime because of reading articles in the papers of other large hauls made successfully.

Judge John J. Connelly of the Boston Juvenile Court, who, before his becoming Judge, spent 13 years as a probation officer, says:

> Children being keenly imitative are greatly influenced by crime news in the press, by crime and horror in the movies, and by fiction that glamorizes the criminal. If crime could be reported without the sensationalism that attracts

the immature mind and gives it false values, if it could always be reported so as to point up the sordidness, dullness, stupidity of crime, the child would not try to identify himself with the criminal. Moreover, the press should continually make plain that the criminal is not the normal but the abnormal member of society. Children instinctively line themselves up with the majority, with what is generally regarded as normal.

Sanford Bates, who was Prison Commissioner for the State of Massachusetts, later Director of the Federal Bureau of Prisons, and now New Jersey Commissioner of Institutions and Agencies, has declared that the prevalence of crime is due to a large extent to the manner in which newspapers play up the details of offenses. He says: "Until newspapers change their attitude toward stories of crime and adopt a policy that will make crime a thing to be detested, we will be unable to check it. At present if a daring crime is committed the newspapers carry the story on the front page in large type and make a glorified hero out of the criminal."

A 16-year-old high school student when arrested in New York State for trying to get a $10,000 ransom from the father of a school chum, is quoted as saying, "I had been reading about the Matson case out West and thought I would be able to get some money so I could travel around the world."

An article in *The Mentor*, published by inmates of the Massachusetts State Prison, had this to say:

We are cognizant of the fact that it is sometimes difficult for newshawks to procure newsworthy material, but we question the wisdom of making such knowledge of safe-cracking accessible to youth of high school age, who comprise part of the newspaper-reading public. . .

Are youthful minds affected by what they read, regardless of theme? There is but one intelligent answer: They are decidedly so. Well, why not do something about this matter? We have laws restricting the sale of obscene literature, because of the moral corruption it is supposed to instigate. Then why not restrict the publishing and sale of all material that is detrimental to the morals and welfare of the nation's youth?

PRECEPT AND EXAMPLE SHOULD GOVERN TREATMENT OF CRIME STORY

Precept and example are still tremendous influences for good citizenship. Newspapers have the responsibility of contributing to, if not leading in, the improvement of society by lending their efforts to publishing all of the good that men do and less exploiting and glamorizing of the sordid and seamy side of life in a way that encourages crime.

To their great credit may it be said the youngsters themselves are busy setting up and following good examples with their clubs, scout movements, forums, and hundreds of other activities.

Newspapers could well shift some of the colorful adjectives and dramatic treatment from crime stories to make constructive activities more attractive, interesting and satisfying.

And on the Advertiser for This Editorial

Two hoodlums, convicted of an outrageous offense against decency, sought mitigation of their sentences in a higher court. There Circuit Judge Carrick H. Buck not only affirmed the sentences but characterized the men as "cheap, sneaking cowards." One will serve a year in jail, the other nine months. Each was fined two hundred dollars.

Sentences such as this, comments from the bench such as that of Judge Buck, and full publicity concerning the identity of the criminals and the punishment meted out to them, should discourage repetition of such attacks. If there were flowers more desirable than orchids, they should be bestowed upon Judge Buck. —*Honolulu Advertiser.*

Defects in the Administration of Justice in Hamilton County (Cincinnati), Ohio

CHARLES O. PORTER

This article is a shortened version of a report to the Hamilton County Good Government League on a survey conducted under that organization's sponsorship during four months in the fall and winter of 1946-1947 which Mr. Porter took out from his senior year in Harvard Law School. Since his graduation last June he has served as law clerk to United States Circuit Judge William Healy in San Francisco, and next month he will join the research staff of the Survey of the Legal Profession.

I-A. *There are too many judges.*

Municipal Court. Almost invariably the civil and criminal rooms are closed every day by 11:00 or 11:30 a. m. The prosecutor and the judge check each other to make sure the proceedings are over by lunch time. The continued docket is carefully arranged to make certain that not too many cases are put down for hearing on any one day.

Each Judge is required by law to report the number of hours he works. The totals appear in the Court's annual report, and, according to them, each judge works six or seven hours a day. Since they almost never write opinions and since I found no evidence of other judicial labors, I am at a loss to explain this discrepancy.

The Court of Common Pleas. "The time they work is a joke," one lawyer who himself had previously been on this bench told me, recalling that in his term the sessions in the six jury rooms lasted all day. "Now they have nothing to do most afternoons," he said. My observations squared with that statement.

The judges themselves readily admit that they are not pressed. The executive committee of the Cincinnati Bar Association, recognizing the superfluity of judges, told Governor Lausche in 1945 that there was no need for him to fill a vacancy created by death. Six months later, a judge on the Common Pleas bench presented an elaborate motion to the executive committee stressing the "mandatory duty" of the governor to fill the appointment, but with no reference at all to the *need* for the services of another judge. The result, after discussion, was that the motion passed stating that the vacancy should be filled within a reasonable time. The question of need, existing or prospective, was omitted entirely.

The increase of divorces and the decrease of civil cases, so that in ten years they have reversed their proportionate positions, are the salient factors in the decline of the work of this bench. The judges dislike divorce cases and tend to tick them off rapidly, in some instances without referring to the brochures prepared by the social workers in the Domestic Relations Court. One judge decided forty such cases in a single day. It is not unusual for three judges to dispose of sixty in one day.

I-B. *There are too many court employees.*

Municipal Court. The bailiff's traditional function was to keep order in the court room and have charge of juries. The seven bailiffs in this court, one for each judge, are not needed to

Author's note: There should be a word about how the material for the paper from which this is taken was gathered and also about my qualifications for research in this field. I was a third year student in Harvard Law School on leave at the time. A columnist in the *Cincinnati Enquirer*, who by coincidence had benefited no little from one or more of the practices I chose to call "defects," wrote in part as follows:

"For every minute the youthful Porter spent in a Hamilton County courtroom or every minute he spent talking with a Hamilton County judge, there are hundreds of Cincinnati lawyers of long experience who have spent hours doing the same thing. . . ."

This statement is true, which is more than I can say for the rest of his comment on my work, but it is misleading for the plain reason that the local lawyers never had sufficient time nor inclination to ask the questions I asked. I did little research in the library. Most of the four months in Cincinnati were spent talking to judges, court officers and lawyers, and in going through court records. Any law student could do it if he had the time, the sponsorship —and the legs. Lawyers, judges, and even a few businessmen, told me what they thought was good and bad about the courts in Hamilton County. I then went on to compare their opinions with the evidence obtainable by observation and research.

keep order. Two policemen are regularly assigned to the Police Court. If the judges are entitled to have a flunkey to run their errands and bring them glasses of water, it is up to the legislature to so provide. Each courtroom certainly needs a clerk while in session. For the other hours there should be work elsewhere for him, as is arranged in the Common Pleas courtroom. By way of comparison, it may be noted that Canton, Ohio, with two Municipal Court judges, has but one bailiff while Toledo with four judges has none at all.

The Court of Common Pleas. Each judge's room has four employees—a clerk, a bailiff, a messenger and an official stenographer. The bailiff and the messenger have very little to do and their numbers could be cut by more than half if a pool system were employed, though several judges objected stressing the "confidential" services of the bailiff and the delicacy necessary in handling juries. A man need not be a bosom employe of a judge to handle juries satisfactorily. Of course, a judge should have facilities for obtaining books, delivering papers and messages around the courthouse, but assigning him a full-time employe for these errands is patently ridiculous.

II. *Court-appointed appraisers, with very few exceptions, do little work but collect full fees anyway.*

Like most others, the Ohio Code provides for the appointment of three "suitable disinterested persons" as appraisers of the property of a decedent's estate. These appointees take an oath to render an honest appraisal. They are paid on a mechanical sliding scale which has nothing to do with the amount of work they do. Usually their work is not important. By custom the probate judge appoints one appraiser and the lawyer for the estate the other two. At least one lawyer only appoints men who agree to serve without fee. "But I have to pay the court's appointee his full fee though he never does anything either," he said. The work, when there is any, is almost invariably done by brokers, auctioneers (who do the drudgery of the item-by-item "actual view" required by the statute) and other experts. The pay scale is roughly one-tenth of one per cent, decreasing progressively to $750 on a million dollar estate. This scale is indefensible because it is not based on work done, and almost always no work whatever is done for these fees.

III. *Rotation of the judges has prevented the development of specialists on the bench and the maintenance of uniform policies in regard to procedure and penalties, but has allowed divergent interpretations and the opportunistic shifting of cases.*

Municipal Court. Each judge in the municipal court, by law, changes his court room every three months, moving about through the five civil rooms, the Police Court and the Traffic Court. This means that a given judge sits on the Police Court bench at 18 month intervals, not counting occasions he sits there to accommodate a sick or vacationing colleague.

It is little wonder a judge loses his familiarity with the criminal statutes and the criminals themselves. The Public Defender, in court every day, says the judges differ widely in their sentencing policies. The probation officer knows many defendants as a result of her long experience, but she is not in court all the time. The prosecutors have their own alternation system.

The result is that there is no one in a position to observe continuously, which is important when it is recalled that most of the defendants are not appearing for the first time. No formal attempts, and few informal ones, are made by the judges to establish uniform policies, though an exception is a recent move by one judge to convince his brothers that they should levy fines instead of imposing jail sentences for drunken driving.

A jury trial involves delays, and continuances are easy to get. Therefore, it is an easy matter for a lawyer to jockey his client into the court where the judge he prefers is sitting. When the time is right, it is easy for counsel to withdraw his jury request or to find himself suddenly ready to try the case.

The Court of Common Pleas. Aside from the Domestic Relations judge who is a specialist by law, the judges on this court adhere in pairs to a strict rotation schedule. A pair of judges will spend a month each on criminal, civil jury and equity matters, then two months on civil jury matters and back to criminal cases for another round.

This routine is their own idea. "I suggested changing every month," one judge told me, "because varying the work is restful." Another

judge on this bench granted that specialization would make a better informed judge whose decisions would establish a uniform and certain policy. He also felt that the strain of specialization was too great and that the judges need the publicity afforded by rotation. The judge in the criminal room gets his name in the papers. On the other hand, one of the other judges strongly urged a specialist criminal judge, on the grounds that the man on that bench needed all the knowledge and experience to which he can humanly aspire.

IV. *Judgments on bail bond forfeitures, averaging ten per cent of the face value of the bond, have undermined the bail bond system.*

It is a settled practice in Hamilton County for judges to scale their judgments on bail forfeitures to ten per cent of the face value of the bond. The bad results were listed in a careful survey made in 1932 by the Cincinnati Regional Crime Committee. Summarized, they were—and are:

1. Cheaper for defendant to jump bond than stand trial.
2. Collusion between bondsmen and defendant, the former knowing full well that he will be held only for a fraction of the face value.
3. Escape of hardened criminal who is likely to have financial backing.
4. Misleading of friends and relatives who think a $500 bond means that the full amount might be forfeit. Professional bondsmen know only ten per cent is being risked.

Although by law the court is supposed to consider the seriousness of the offense, previous criminal record and the probability of appearance in fixing the amount of the bond, the Municipal and Common Pleas courts normally only consider the first factor, leaving the other two for arraignment when it will likely be too late if either or both are significant.

Statistics for the Municipal Court for January through November, 1946, are:

Bonds issued 11,744
Forfeitures paid 100
(.9 per cent of bonds issued.)
Face value of forfeited bonds.....$14,050
Amount of judgments paid thereon.....$1,641

The Court of Common Pleas. In the Court of Common Pleas, the men accused of felonies have a similar advantage:

Bonds recorded 809
Forfeitures 92
(46 had been paid, but 23 of the 46 had been set aside evidently because the principal had been apprehended.)
Face value of bonds on which forfeitures were paid $41,500
Amount of judgments paid thereon.... 10,945

From these figures it would appear that forfeitures in the Court of Common Pleas pay 26c on the dollar as compared with 12c on the dollar in the Municipal Court. A $7,000 judgment, however, was paid on a $7,500 bond on December 5, 1946. A substantial remission of most or all of this judgment is a virtual certainty, according to precedent and in the judgment of assistant prosecutors who are familiar with these proceedings. With this unusual forfeiture not considered, the other 45 average ten cents on the dollar.

One judge stated that the non-professional bondsmen, that is, a relative or a friend of the accused, is favored on these forfeitures whereas the professional must pay twice as much. The figures do not bear this out, however, but show that the two leading professionals paid 8c and 10c respectively on their forfeitures. These professionals have bad reputations. They are called "parasites" and "a low bunch" by the prosecutors. Requirements for licensing and surety appear to be adequate. Remedy can come only from the judges themselves.

V. *The attorneys appointed by the court to defend indigent prisoners are often decidedly less able than the prosecutors who represent the state.*

When an accused asserts that he cannot afford to hire a lawyer, the Presiding Judge of the criminal room appoints counsel for him. The assertion of pauperism is enough. No investigation is made, as is true with rational present day charitable dispensations. The lawyers selected by the judges are, by and large, a sorry lot. One prosecutor, with more than ten years' experience, recalls at least ten occasions when he felt constrained to speak to the judge after a trial to say that he felt the indigent prisoner was handicapped by counsel, by the very man the court appointed to assist him. This particular prosecutor and his colleagues, on the other hand, are usually good lawyers, ambitious, hard-working young men who know that their positions with the prosecutor's office are worth far more than the salaries paid. Four

Common Pleas judges, for example, started there.

Three judges admitted that they did not know many of the men they appointed. That a man is a member of the Ohio bar is enough for one judge. Another requires that they also be veterans. One grants that in the minor (though hardly "minor" to the accused) trials, which are of course the great majority of the cases, appointed counsel are not equal in ability to the men representing the state, but he declares that in the murder cases the advantage is often the other way.

The statistics of these appointments and the lawyers most favored refer to the period between February 15, 1937, and December 18, 1946.

Total number of cases.....4,015
Total number of lawyers..... 620

(115 [19%] of the 620 handled 2,315 [57%] of the 4,015.)

12 lawyers had 40 or more cases each, the top man having 72 and four others more than 50 each.

A list of the names of these men would convince many Hamilton County lawyers that the indigent prisoners were receiving little helpful assistance, if any in some instances. Most of these counsel got the appointments for reasons unrelated to their professional abilities. One is known by the judge who appoints him to be unbalanced mentally. Another obtained more than half of his appointments from a close relative on the bench. Another had once shared offices with a judge on that bench. At least two are small-time collection specialists. Many of course are machine politicians. A judge, speaking of one of the lawyers who had more than 40 appointments, remarked that the poor fellow frequently needed money to pay the rent of his single room. This jurist recommended the establishment of a public defender to handle these cases. The average annual amount of money spent in fees to these counsel over the last ten years has been $20,689, sufficient to set up a full-time staff.

VI. *Pre-Trial procedure is not utilized.*

Pre-trial procedure for civil cases, creditably established in the federal trial courts and elsewhere, is provided for by Rule IV of the Rules of Practice of the Court of Common Pleas. All but three judges state that it is unnecessary because the trial docket is uncongested, or that it is unworkable because the lawyers won't cooperate, or that the pleadings are beyond improvement.

The Presiding Judge, whose office rotates among the judges annually, is empowered to conduct the pre-trial work or appoint another judge to do so. For the last three years, however, the judges in that position have not chosen to act. Instead of having pre-trial as a matter of course, the lawyers are not informed, via a rubber stamp which the Assignment Commissioner uses on his notification cards, "If pre-trial would be of assistance in this case advise immediately." A case is not pre-tried unless both counsel consent. Lately, there has been no response to this notice. Delays and more delays are a matter of course in this court. One reason is that five lawyers do 80 per cent of the jury trial work in this court.

A judge pointed out that pre-trial procedure cannot be maintained in the face of this flood of continuances because if counsel cannot agree on a setting, they are not prepared to discuss the details of the case at the time the court calls the pre-trial conference.

"If 50 cases were on the pre-trial docket, probably 20 could be helped by admissions, amendments and stipulations," asserts another judge, a man who favors pre-trial and believes that its neglect is the fault of his colleagues for not giving it a fair try. An experienced trial lawyer said he believed pre-trial could be made to work if the judges made a serious attempt to administer it, instead of merely holding a brief discussion as in the past and then setting a date for the trial, a date which was subject to many changes.

VII. *Trials in the municipal criminal courts are conducted in an unjudicial manner.*

More citizens of Hamilton County receive their most vivid impressions of the administration of justice in the Traffic Court or the Police Court than in all the other courts put together. Yet these courts are disgraceful examples of adjudicative institutions. The atmosphere alone is enough to prejudice a person against the society represented by these slovenly tribunals.

A. *There is no proper dignity maintained by the court.*

Although the blame is also on the judge in command, the origins of the unjudicial at-

mosphere extend beyond the weaknesses of any one judge. The habits observed were not new.

1. *The defendants, and often the witnesses and spectators, are frequently treated with rudeness or familiarity or both.*

The bailiffs in both criminal rooms of the Municipal Court behave like cross school teachers. One in Police Court is quick to put his hands on people, quite unnecessarily, to hurry them along. When people are called to the bar, sometimes through a microphone which has a speaker in the corridor because on crowded days the courtroom overflows, the tone of the voice is consistently peremptory and officious instead of impersonally official or simply businesslike.

The prosecutors habitually scowl and use strident voices, relaxing occasionally, however, to make a joke at the expense of a defendant or witness. It is not uncommon for a prosecutor to show his disbelief by grimaces and to indicate extreme impatience while testimony is being given. The judges frequently try their hands at humor. Levity to the point of hilarity, is often present in these courts, brought there by the judge and prosecutor for their mutual amusement. Negroes are usually the butt of their jokes. The judge and the prosecutor call parties "boy" or even "Brother" or address them by their first names. Elderly men are sometimes called "Dad."

"What happened? Why did you swear out a warrant?" the prosecutor shouted at an old man who was appearing as complainant and was much dismayed by the rudeness. "What's coming off here?" yelled the judge ill-temperedly on another occasion to get order in the court. A colleague dismissed a defendant by bellowing, "Get out of here." He also told a defendant he was lying. The examples are numerous and more appear daily.

2. *The trials are often conducted by the "huddle" system which means that only the judge, the prosecutor and the litigants can hear the proceedings.*

A person in the front row of the spectator section can seldom hear the testimony and colloquies at the bar. Defense attorneys often have to move in beyond the railing toward the judge in order to follow the proceedings. The acoustics of neither courtroom are good but the trials could be truly public if the judge desired it. This identical phenomenon was noted in the Cleveland Survey and in its recheck nine years later. This is *not* a "public" trial.

3. *The court clerks usually work in their shirtsleeves, administer oaths poorly and create confusion by talking to people while the court is in session.*

Canon 36 of Judicial Ethics stresses the importance of impressing on a witness the importance of the oath, but in these courts the process is perfunctory to the extreme. The traffic court judge once admitted that his requests for "order in the court" should be addressed to his own clerks who were collecting money during the session. Clerks work in their shirtsleeves in the courtroom, often with unbuttoned vests or a sweater.

4. *Persons are allowed to stand behind the judge, the prosecutor and the clerk or chief court officer while court is in session.*

This is expressly forbidden by Rule III of the Rules of Practice of the Criminal Division of the Municipal Court. Members of the press are excepted. Calculated to avoid suspicious appearance of improper influence, the rule is one of very few governing the conduct of the criminal courts, yet no effort is made to enforce it.

Lack of decorum is evidenced in other ways, ranging from a whiskey-reeking judge on the bench at 9 a. m. to the commercial calendars on the walls. The crowded corridors, alive with bondsmen, soliciting lawyers, runners for one or both; the excessively dirty lavatories, and the ancient courtrooms are part of the picture given the public every day.

B. *Cases often receive inadequate hearings because of the desire for speed.*

The docket must be cleared every day—invariably by lunchtime. A news item recently reported that a Police Court judge broke his own record for speed by going through 156 cases in two hours and 15 minutes. Many were dismissals for want of prosecution and continuances, but continuances are supposed to be granted for valid reasons and merit more than a minute each. On this same docket were 31 drunkenness cases. Finding the facts and levying an appropriate sentence in the drunkenness and domestic relations cases require more at-

tention than these judges allow. The only delays, however, are to permit the judge to lecture roundly or make a joke.

The decorum of the municipal criminal courts is in the hands of the people, said one judge. They like it this way. More than 27,000 persons were called in 1945. Perhaps the "people" referred to are the voters or more specifically the men who get out the vote, many of whom have patronage positions in the court and in its clerk's office.

VIII. *Municipal court judges are too lenient in the penalties they give in gambling and traffic cases.*

Several judges refuse to enforce the gambling laws. The Municipal Court judges as a whole give light sentences or remit them completely including costs. Remission of costs in Police Court, which in effect says the accused is guilty but shall receive no penalty, not even costs, occurs in a third of all cases where a conviction is secured. If the gambling cases were considered by themselves, the proportion is even higher. If a man is convicted twice of promoting a scheme of chance, he can be sent to the penitentiary, but the first conviction customarily results in suspension of sentence. Only one man has been sent to the penitentiary on a second conviction. No one, including the detective in charge of the gambling squad, could recall any instance where a bookmaker had been sent to jail. The penalties are severe enough as the law stands but when the judges refuse to apply them the police soon become discouraged in their efforts to bring in violators.

"These gamblers have beaten the law," said a leading criminal lawyer who once sat on the Municipal bench himself. "The fines they pay are chicken feed." This man, whose experience with juries is considerable, believes that juries, if given a chance, would convict the gamblers and that the application of heavier penalties would bring the rackets to heel.

Nearly half of all the persons found guilty in traffic courts are let off with no penalty at all, not even required to pay the two dollars cost. The newspapers often print tables of figures demonstrating that the number of convictions compared with the number tried is high, but the chances are fifty-fifty that the convicted offender leaves the courtroom no poorer than when he came in.

Many cases never come to trial because the offenders may sign a written plea of guilty in the Traffic Bureau, pay their two dollars for illegal parking, five dollars for going through a red or amber traffic light, or a safety lane delinquency. It makes no difference how many previous offenses any one violator may have committed. The Bureau is like a grocery store, only it sells exoneration instead of staples. More than 55,000 "items" were "sold" in 1945. In the same year the traffic court disposed of 27,000 citations.

A good many of the "customers" of the Bureau come back again and again, says the clerk on duty. There is no record of repeated offenses. A professional expert on traffic matters, often present in court over many years, declared that if a judge would let the people know he intends to be tough and then stick to it, plenty of citizens would back him.

If the court convicts a man, he should be punished unless there is a very good reason why not and which the judge endorses on the outside of the complaint. This has been accomplished in New York by establishing and enforcing a schedule of minimum fines. The judges there declared publicly that they would desist from wholesale remissions of costs and fines where defendants are found guilty.

The Bar Association's Committee on Traffic Safety and Enforcement is aware of this problem and this solution. The chairman has long pushed the "minimum schedule" plan. The present volume of traffic violations and futile convictions indicates a need for immediate action.

IX. *Lack of effective organization hampers the operation of the courts.*

"The last stronghold of rugged individualism," the phrase of a local lawyer, is an apt characterization of the judgeships in Hamilton County. Aside from the Probate Court, which has but one judge, these courts have formal organization with presiding judges but their joint actions are stylized, perfunctory and largely ineffective.

The Municipal Court. The Presiding Judge is elected as such by the voters. He presides at the monthly sessions and decides how to divide the classes of cases among the rooms. His salary is $7,500, $500 more than what the other judges receive. A typical joint session lasts less than fifteen minutes. The minutes for

1943 through 1946 show that *all* motions passed by a unanimous vote. Vacations of the judges; resignations and appointments of various court personnel; and always a reading of the month's statistical report, were the items most frequently listed in the minutes. One joint session was observed by the writer. The judges seemed very bored. Some did not bother to vote on the routine motions. The most animated discussion was aroused by suggestions as to a gift for a retiring colleague.

The presiding judge can always be reversed by a majority vote of the other judges. Until he has power he cannot be expected to accomplish much in carrying out a single policy for the one community the court serves instead of, as at present, seven divergent, irresponsible policies.

The Court of Common Pleas. With reference to the executive chief justice system which has met with impressive success in Cleveland, one Common Pleas judge spoke the minds of several when he said, "It is an attempt to create an oligarchy to get a corner on the patronage. Each judge has a responsibility to work satisfactorily to the extent the Almighty God has given him the power."

An over-crowded docket is not the reason for the delays in trials in this court. Rather the cause lies in the toleration by the judges of repeated continuances. The cases are set down by assignment commissioners who keep the docket in order but who lack authority to do more than a clerical job of coordination. They can, it is true, put a case on the dead list after three continuances. Once on the dead list, it must be taken off within six months or an entry of dismissal is made. If it is taken off in the meantime, a trial date must be set. Like the so-called "peremptory" settings by the judges, this date is subject to change and, quite likely, more change.

A chief judge with general superintendence over the court, as in Cleveland, could be elected here. Under the same provision of Ohio law, invoked in Cleveland, each judge would then be required to report his working time each month. Shortly after this statute went into effect, some 20 years ago, the judges on the Hamilton County Common Pleas bench did elect a chief judge but a few weeks later decided to undo their decision. The question has never been raised again, in spite of the fact that the Cleveland court used the statute and won national acclaim as a result of its application of the executive principle.

"Some judges won't work," the erstwhile chief judge said. "Judges feel they are elected and equal, responsible only to the public and that is their own business how they perform. The executive system is a better way of keeping untried cases before the court, but assignment commissioners as it is have no authority to buck up against any judge. Much of my time these days is spent arguing continuances with the attorneys. This court as a whole grants too many continuances."

Another judge said, "The judges have a foolish fear that the lawyers will become angry if the court presses for trial. The truth is that the lawyers are reluctant to start a trial and would just as soon be pushed into it by the court." This judge, when he was presiding judge recently, called 1,600 old cases, dismissed those where there was no response though they were at issue and set a trial date for those that were not at issue.

Under the present system no one judge can keep a docket clear of dead wood. The one year term of the presiding judge in practice precludes a consistent program, though perhaps it should not. Several judges regard delay as a good thing, even to the degree it is present currently, because it gives times for a settlement, thus making a trial unnecessary.

The age of the cases when they come to trial is shown by this breakdown of 291 civil cases set for trial as of December 26, for the month of January, 1946:

More than two years old.....25%
More than one year old.....40%

Of the 173 filed in 1946, over half were filed in the first six months of the year. Only nine of this 173 were less than three months old.

The war years, 1941-45, accounted for 110 or 67 per cent of the cases over a year old. These figures show that, while the court is "up on its docket," prompt trial of cases is by no means the rule even considering the effect of the war. The judges meet in joint session once every three months and its members parcel the work out to committee of three judges each. There are many examples of valuable measures carried through in this manner, though the minutes disclose no mention at all of the continu-

ance problem and there are many other things a strong chief judge could put through if the court chose to take advantage of the statute.

THESE DEFECTS ARE LARGELY THE RESULT OF POLITICAL NECESSITIES AND THE PASSIVISM OF THE BAR

Political Necessities

A man does not become a judge in Hamilton County save in the rarest of cases, unless he has the approval of the Republican organization, which organization is controlled by a boss who awards favors for value received. "It always is necessary to consider the vote-getting qualities of any appointee, but even more necessary to consider his vote-getting ability," according to an *Enquirer* editorial, January 26, 1947, which went on to say that the selection of the judges is actually by the party leaders who have no formal responsibility for their selections. These statements are accurate.

Only one candidate has been entered for each office in the judicial primaries in the last twenty years. That candidate has always been the organization's choice. A high official on the Board of Elections called the primaries "a wasteful farce" because they decide nothing and are expensive to finance. It is plainly a necessity that any aspirant to the bench must have the approval of the Boss. This "elder statesman," a one-time lieutenant of the notorious Boss Cox whom Lincoln Steffens described, is more than a mere adviser, according to seasoned newspapermen and as confirmed by Senator Taft (who also recommended ousting him from power). When this report was written in January, 1946, the Governor of Ohio was consulting with the Hamilton County GOP patronage committee with reference to a vacancy on the Common Pleas bench caused by death, a procedure reported in the papers and denounced by Charles Taft as a "brazen exercise of the spoils system."

The defense presented by the Organization's supporters is that good candidates must be named or the party will lose prestige. "The rank and file, the bolivars, that is, don't want to push inept candidates," said one judge. The premise here is that the Organization's rank and file are qualified to assess a man's judicial fitness.

Voters always re-elect judges because the judges are honest, stated one veteran Municipal judge who even so spends much of his ample spare time mending fences. His colleagues, particularly the younger ones, are busy using their afternoons and evenings getting around. One said he received three bushel baskets of Christmas cards. Another observed how difficult it is for a judge to make a campaign speech. All he can do is promise justice to whichever class of voters he is mentioning and tell funny stories. All judges agree that their political activities take a good deal of time and money.

An editorial writer who wrote an article implying that the judges were non-political recanted when challenged, saying that was the theory anyway. An editor of a local paper deplored the "bolivar" (Cincinnati word for ward-heeler) type on the judiciary. He blamed it on the breakdown of the two-party system, meaning that the Organization had squeezed out all effective competition.

One judge serves on the boards of two private businesses, much to the disapproval of several colleagues. Almost all the judges, however, violate another Canon of Judicial Ethics, namely, number 28, entitled "Partisan Politics." Many of them do "engage generally" in partisan activities. Two of the four men running the Republican Organization directly under the Boss are judges. Others do their part by presiding over party functions, being chairman of committees, making speeches at political meetings, and otherwise lending their energies and prestige for the good of the party—and themselves.

The Passivism of the Bar

The minutes of the Bar Association indicate that several of the above described defects have received attention, although little action, from time to time. The hold of the Organization on the Association's members is too plain to gainsay.

Its most splendid accomplishment, a bar primary it has conducted for nearly 20 years, was sullied in the most recent election for the first time. One judge's campaign committee, charging that the opposition was campaigning illegally, sought to win votes for their man by mailing letters to all members of the Association. The alleged violation was never proved nor, more disgraceful, did the Bar Association ever take any action to censure the persons responsible for the misrepresentation and the breach.

Many of the leading Bar Association mem-

bers are aware of the defects in the administration of justice. The sad fact seems to be that they tolerate them either because they fear the wrath of the Organization, or profit by supporting the Organization, or both, or are too indifferent to lift a finger to raise their professional standards.

POLITICAL SIDE OF THE DEFECTS

The judge does not repay his debt to the Organization by handing over money or deciding cases as he is directed. A few do nothing more than lend prestige to the Organization because they are outstanding and honorable men. The courtroom employees are normally appointed by the party leaders. The judge's oppointments of appraisers and counsel for indigent prisoners may be, in most cases, handled as personal patronage. The Organization's recommendations are taken into account and often their interests are identical. The atmosphere and leniency in the Municipal Court are direct offshoots of the fact that the ward and precinct leaders, who make up its key officers, regard it as their domain to help in doling out favors to strengthen their own and the Organization's position. The neglect of pre-trial procedure and the failure to establish business-like organization quite possibly arise, indirectly at least, from the knowledge that if the already slim work of the court is reduced any further, the number of judges with nothing to do will excite regrettable comment which would eventually mean fewer judges on the courts. The extremely low judgments on bail bond forfeitures may be another aspect of the political necessity of not seeming to be unduly harsh, though not so much as concerns the bondsmen but rather as it would affect persons who had to pay higher fees to the bondsmen. The judges rotate principally because they believe in sharing the publicity received in the criminal courts. "It's like selling Ivory soap," said one judge. "If people keep seeing your name in the paper, they recognize it on the ballot."

RECOMMENDATIONS

1. Reduce the number of judges on the Municipal Court and the Court of Common Pleas by at least two respectively.

Add another specialist judge to the Court of Domestic Relations.

2. In the Common Pleas courtrooms, abolish the positions of messenger and bailiff. In the Municipal courtrooms, abolish the position of bailiff.

3. Establish an official appraiser for the Probate and Common Pleas courts who would be used exclusively in the administration of estates and partition suits.

4. Assign or elect judges for continuous duty in Common Pleas criminal cases and in the Traffic and Police courts of the Municipal Court, thus doing away with the rotation system.

5. Collect the face value of the bail bond upon forfeiture unless special circumstances warranted a reduction.

6. Establish a public defender's office to handle the cases of indigent prisoners in the Court of Common Pleas.

7. Utilize pre-trial procedure in the Court of Common Pleas.

8. Establish decorum in the Police and Traffic Courts.

9. Enforce the penalties for violations of the gambling laws or change those laws.

10. Introduce a schedule of minimum penalties for offenses brought before the Traffic Court.

11. Require third offenders on parking and traffic light violations to appear in the Traffic Court for trial and scale the penalties upward to discourage repeaters.

12. Adopt a business-like organization for the benches of the Municipal and Common Pleas Courts.

13. Get the nomination and election of judges and the appointment of court employees out of the control of a bossed, patronage-supported political machine.

It is refreshing to see the lawyers of the country assuming more and more responsibility for legal aid as one of the obligations of the members of the bar, both individually and collectively. In so doing they are constantly reminding us that we need not necessarily surrender to the easy but dangerous course of accepting government subsidies. We are proud to be counted as members of a profession that does not really surrender.—*Arthur T. Vanderbilt.*

Missouri Bar to Supplement Non-Partisan Court Plan With Bar Poll and Election Campaign

"As in the case of any measure to improve the administration of justice, the job of the bar does not end with the enactment of the measure, but on the contrary, the bar has a duty to be ever on the alert to see that the progressive enactments it has brought about function fairly and efficiently."

Supplementation of the Missouri Non-Partisan Court Plan for selection of judges, now in its eighth year of operation, with a bar opinion poll on the qualifications of candidates for retention in office and an active campaign to publicize the results of the poll and induce voters to vote in accordance therewith, is to be initiated this summer under the sponsorship of the Missouri Bar as a result of a recent recommendation by that organization's Committee on Judicial Selection and Tenure.

The Committee, of which William W. Crowdus, St. Louis, is chairman, prefaced its recommendations with some comments on the working of the non-competitive election and the separate judicial ballot, as exemplified in the case of two judges, Honorable Samuel A. Dew of the Kansas City Court of Appeals and Honorable William L. Vandeventer of the Springfield Court of Appeals, in the last (1946) general election.

Both judges had good records on the bench, and both were returned to office in that election. Judge Dew, however, failed to carry 12 of the 45 counties in his district, and Judge Vandeventer lost in three of the 44 counties in his district. There was a substantial negative vote in each instance — 141,458 for and 83,417 against Dew, and 71,654 for and 43,932 against Vandeventer—and a great many voters did not vote the judicial ballot at all, for the vote for United States senator was approximately double that on the judicial ballots in each district.

Although the end result was satisfactory in that both good judges were retained in office, the large negative vote on these men who were clearly entitled to a favorable vote, and the large number of voters who did not cast a vote on that issue at all, led many lawyers and judges to feel that the voter's part in the process was not operating as efficiently as it might, especially since these two examples were illustrative of more or less general experience under the Plan to date. It is a well-known fact that many voters, illogically but none the less inevitably, vote no on questions about which they are uninformed, and a similar inference must be drawn regarding the thousands who ignored the judicial ballot. The Committee thus come to the conclusioin that for the Plan to operate at its best, some systematic procedure must be adopted to better prepare the voter for the part assigned to him, and to induce him to perform that part.

Although the Plan itself is a part of the state constitution, the Committee suggested, citing the Canons of Ethics, that the activity indicated is a proper one for the bar on an unofficial and voluntary basis, and it recommended that in each election year the Missouri Bar conduct a poll of its members on the various judicial candidates running for office under the Plan, and publicize the results thereof.

The unique procedure proposed for conducting the poll is worthy of a fairly detailed description here. The voters of the circuit or district involved will first vote on a question identical with that prescribed for the voters in the judicial election: "Shall Judge ——— of the————Court be retained in office? Yes—— No. ——." The results of this poll are to be announced, and those endorsed by the bar will have the active support of the bar in the election campaign. In case the vote as to any judge is unfavorable and that judge should go ahead and file a declaration of candidacy to succeed himself anyway, a second poll will be taken, wherein the members of the bar will be asked specifically whether or not the judge in question is qualified to be retained in office from the standpoint of certain specified particulars. Following is the form of that ballot:

"In your opinion has Judge ——— of the ———Court demonstrated that he is qualified

to be retained in office from the following standpoints:

"(a) Legal ability?	Yes	No
"(b) Industry?	Yes	No
"(c) Judicial temperament?	Yes	No
"(d) Integrity and strict impartiality?	Yes	No
"(e) Absence of political activity in judicial office since adoption of the Non-Partisan Court Plan?	Yes	No

"Giving due consideration to all of the foregoing factors, should Judge ——— be retained in office? Yes No

"IMPORTANT: Please answer ALL of the above questions. No vote will be counted unless each of the questions (a) to (e) is answered."

If the vote this time should differ from before and favor the candidate, that fact would be announced and nothing said about the answers to the questions on the ballot. If it is again unfavorable, however, the subsequent publicity would include not only that fact but the specific reasons why the members of the bar feel he should be rejected.

Broad and complete publicity is to be given at each step, including paid newspaper advertising and radio time, and an appropriation of not less than $5,000 of bar funds is suggested for that purpose each election year.

A further important feature of the plan is the appointment by the state bar president of a committee of lawyers in each judicial circuit to see to it that the judicial election and the bar recommendations receive adequate local publicity, to make sure that the voting booth attendants do actually hand out the judicial ballot to each voter, and in other ways make sure that the judicial election and the bar recommendations are brought to the attention of the voters to the end that they will vote the separate ballot and vote it as recommended.

At a meeting last month the Executive Committee approved the recommendations of the Committee on Judicial Selection and Tenure, and although the remaining time was deemed insufficient to permit the taking of the dual vote this year, immediate action was ordered toward taking the first bar poll and publicizing its results in time to influence the voting in the 1948 general election.

"The people of Missouri are fortunate in having adopted the Missouri Plan," the Committee report observed, "and we are proud to announce that said Plan is receiving wide and favorable publicity throughout the nation, and that many other states are presently considering the adoption of a similar plan. The Plan will function with an even greater degree of success than it has in the years to come, provided the organized bar recognizes its responsibility in connection therewith and performs its full duty respecting the operation thereof. As in the case of any measure to improve the administration of justice, the job of the bar does not end with the enactment of the measure, but on the contrary the bar has a duty to be ever on the alert to see that the progressive enactments it has brought about function fairly and efficiently."

Expense Allowance for Kentucky Judges Held Constitutional

Salary relief for Kentucky judges, restricted by the state constitution to a $5,000 a year maximum, moved a step closer to accomplishment last month when Special Judge Leslie W. Morris of Frankfort ruled constitutional a 1948 statute granting lump sum expense allowances to the judges.

The statute, approved March 24, 1948, grants to each circuit judge $100 a month for postage, telephone service, supplies, stationery, stenographic assistance, law clerk hire, and books and periodicals, and to each judge and commissioner of the Court of Appeals $150 a month as a reasonable equivalent of the travel, food and lodging expenses he would incur if he commuted from his home to the state capital.

There being some doubt as to the constitutionality of the act, the Kentucky State Bar Association filed suit for declaratory judgment, and a hearing was held on April 22, resulting in the favorable decision by Judge Morris.

Improvements in Methods of Handling Jurors in New York County

In a report filed with the justices of the Appellate Division of the New York Supreme Court, First Judicial Department, the Honorable Archibald R. Watson, County Clerk and Clerk of the Supreme Court for New York County, has presented an impressive summary

of improvements and modernizations in the equipment and procedures of that office during the ten years since it was changed from an elective office to an appointive office under the supervision and control of the Appellate Division.

In addition to numerous changes affecting other features of the work, there were extensive improvements affecting the administration of justice, particularly the handling of jurors. A separate list of prospective jurors thought to be unfit for jury service in the Supreme or City courts but "good enough" for the Municipal Court was discontinued and all persons on it re-examined and either rejected entirely or put on the one jury list. Previously persons who disregarded notices to appear for determination of their qualifications for jury service were peremptorily put down for jury service by way of penalty for their default, but the public, of course, stood as much chance of being penalized as did the juror, and the practice was discontinued. The procedure for examination of prospective jurors was revised and systematized so that instead of a brief oral examination over the counter in the outer office, in the presence of a crowd of other people, prospective jurors were given questionnaires to fill out in the comfort and privacy of a desk. Furthermore, in the notice to appear was added a brief summary of the information to be required, to enable them to be prepared to supply it.

Other innovations in jury procedure established by act of the legislature on bills provided by the County Clerk's office include:

It was made contempt of court for a person to act or attempt to act as a juror in place of the person duly notified to attend.

It was provided that the service of jury summonses might be made by mail instead of personally, thus releasing eleven jury notice servers for other work with more satisfactory results on the summonses.

The impractical requirement that all non-voters in the county should be called to jury service before the voters was repealed, making the entire jury list available as a whole without distinction between those who did and those who did not vote.

The County Clerk was permitted, in his discretion, to call a juror for service for the term which the juror specified as most convenient.

Many of the improvements sponsored by the County Clerk of New York County were subsequently embodied in the Uniform Jury Law for the City of New York sponsored by the judicial council.

New Plan for Removal of Judges Wins New York Voters' Approval

A new procedure for retiring or removing New York judges, drafted by the Citizens' Committee on the Courts and supported by that organization, the New York State Bar Association, and other legal groups of the state, was adopted by a substantial majority of votes in both metropolitan and upstate districts in the November election.

The plan, which will be an alternative rather than a substitute for the existing legislative impeachment procedure, provides for the setting up of a "Court on the Judiciary," to consist of the chief judge and senior associate judge of the Court of Appeals, and one justice from each of the Appellate Divisions of the Supreme Court, to be chosen by vote of the judges of the Division. It will have power to remove for mental or physical disability, as well as for misconduct, any judge of the Court of Appeals, the Supreme Court, court of claims, surrogate, special sessions, county court, or city court of record.

The only procedure for removing a judge prior to adoption of this amendment was by impeachment by concurrent resolution adopted by a two-thirds vote of each house of the legislature. Most of the states have no better method, although many years of experience has demonstrated that only in the most flagrant cases of misconduct will impeachment be attempted, and then it is almost never free from political influence.

"The legislature is not constituted to perform such a service," said the Committee on State Constitution of the New York State Bar Association. "It should not be burdened with impeachment proceedings. The amendment places the responsibility for the conduct of judges upon the judicial branch of the government, where it belongs."

Kansas Legislative Council to Introduce Missouri Plan in 1949 Session

The Committee on Judiciary of the Kansas Legislative council, which for the past year has been studying the selection and tenure of judges in compliance with a 1947 legislative

mandate, reported at the Council's June 4 meeting that after extensive study it had come to the conclusion that Kansas voters actually have little to say about the selection of judges in a large number of judicial districts of the state, and that in the opinion of the committee a better basis for judicial selection could be provided. It referred to the plan approved by the American Bar Association and adopted in 1940 in Missouri, and declared that there has been general satisfaction with its operation there and considerable interest in establishment of a similar procedure in Kansas. The committee expressed the opinion that the matter is of sufficient importance to warrant its presentation to the next session of the legislature, and its request for authority to draft a proposed amendment to the Kansas constitution to that end was approved by the Council. Richard L. Becker is chairman of the committee.

A. B. A. Essay Contest Rules Broadened

Extension of the deadline of the American Bar Association administrative law essay contest announced in the February JOURNAL from November 1 to December 31, 1948, has been announced by Chief Justice George Rossman, chairman of the Section of Administrative Law. The eligibility rule also has been liberalized, to render eligible all persons who join the American Bar Association before December 1.

The contest, for which a prize of $1,000 is offered, is for an essay of four thousand words or less reviewing and analyzing the administrative law of the contestant's state, both legislative and as evidenced by judicial decisions. In several states auxiliary prizes have been offered for the best essay within the state. Full information may be secured from Mr. Omar C. Spencer, chairman of the contest committee, Yeon Building, Portland 4, Oregon.

Paragraphs

Establishment of pre-trial procedure in the Superior Court of King County, Washington, is in prospect as a result of a petition presented by the Seattle Bar Association and now under consideration by a committee of Superior Court judges. The procedure already is authorized under Rule 18 of the state rules of practice, and the move to put it in operation has been endorsed by Federal Judge (Former Chief Justice) Sam Driver, and Former Federal District Judge Lewis B. Schwellenbach, now United States Secretary of Labor.

Abolition of the distinction between attorneys and counsellors long characteristic of the New Jersey bar, is the object of a resolution proposed by the Junior Section of the New Jersey State Bar Association at its annual meeting last month and subsequently adopted by the main Association, which provided for the formation of a committee to draft a rule abolishing the distinction and urge the Supreme Court to adopt it. Such action would make all members of the bar eligible to practice in all of the courts of the state.

Among the subjects on which uniformity of laws among the nations of North and South America was proposed at the last conference of the Inter-American Bar Association at Lima, Peru, were codification of administrative procedure, adequate provisions in all constitutions for the protection of vested rights, valid juridical pacts and res adjudicata, organization of permanent committees to investigate the cause of juvenile delinquency, the creation of a continental office for criminal identification, and uniform standards of professional ethics.

Institutional advertising used by the Gary (Ind.) Bar Association has been gathered into a booklet, copies of which may be secured from G. W. Springman, chairman of the Association's Public Relations Committee, Gary Trust Building, Gary, Indiana.

"Bread and Butter Luncheons" are the Kansas City Lawyers Association's answer to the problem of post-admission legal education. At these luncheons a member of the Association who has given particular attention to a subject addresses the meeting. He concludes at 1:30, and a half-hour question period follows. Subjects discussed, of every-day "bread and butter" importance, have included wills, workmen's compensation, the new Code of Civil Procedure, the new corporation code, a proposed code for corporations not for profit, title examination standards, community property, and others. Attendance at these luncheons has been much better than at the Association's evening meetings, and they are considered to be more popular than the legal institutes conducted a few years ago.

The Reader's Viewpoint

An Anglophile Exposed

To the Editor:

I have for many years greatly enjoyed reading the JOURNAL, and feel that it is doing a marvelous job in helping to improve the law.

For one who usually thinks very accurately, I was surprised to find you making what seems to be a significant error in referring to the marks on the standard meter bar as "roughly 39.37 inches apart." If I have been correctly informed, an international commission of physicists some years ago prepared a series of duplicates of the standard meter bar to which you refer, the duplicates being as accurate a reproduction as the physicists were able to make. The United States was awarded by lot two of these duplicates, one of which was made by act of Congress and executive order of the President the official standard of length for the United States, and our yard was defined as 3600/3937 of the distance between the scratches on the prototype meter bar in our archives at Washington.

It would seem, then, that the distance between the scratches on the standard bar in France is more than "roughly" equivalent to 39.37 inches. The meter bar to which you refer is our primary standard, and rather than being compared to any other all others must be compared to it.

DWIGHT S. SPRENG, M. D.
11420 Lorain Avenue, Cleveland 11, Ohio.

Dr. Spreng is quite right, as a reading of the article "Measures and Weights" in the Encyclopedia Britannica will quickly confirm. When the word "inch" is used in a magazine published in this country, it is surely proper to assume that the official United States inch, one thirty-sixth of the official United States yard, is meant. American weights and measures, however, like American law, are part of our heritage from England, and, as in the case of the law, legal action in this country has reduced what was once an identity to a mere similarity. The standard English yard is the distance between two scratches on a bronze bar carefully guarded in British government archives. The distance between them is .914399 meter, whereas the U. S. yard is .914402 meter. That—assuming our pencil slipped nowhere during the process of calculation—makes the meter 39.368± inches, which is *roughly* 39.37 inches, in terms of the original English yard if not of its degenerate American offspring.

Sound Recording in the Courts

To the Editor:

I am informed that in several of the eastern states experiments are being made with sound recording devices in the trial courts. If you know of any such instances, will you please advise me where they are taking place.

MARSHALL F. MCCOMB.
District Court of Appeal,
Los Angeles, Calif.

Readers able to supply the above information are requested to write direct to Judge McComb, with carbon copy to the JOURNAL.

New Illinois Supreme Court Rule Insures Representation by Counsel

To the Editor:

I thoroughly enjoyed Justice Douglas' article "Procedural Safeguards in the Bill of Rights" which appeared in the April JOURNAL. It occurred to me that you might be interested to know that at the May term of court the Supreme Court of Illinois adopted a rule to insure the representation by counsel of all persons in Illinois charged with crimes which might result in their incarceration in the penitentiary. As far as I know, the rule is the first of its kind adopted by any court in the country, at least in its general scope and purpose. While the Missouri courts have a system of forms and the federal rules of criminal procedure contemplate that all accused shall be represented by counsel, and while the Indiana Supreme Court is considering a proposal submitted to it by its Judicial Council, none of the rules go as far as the newly-adopted Illinois rule.

The action of the Supreme Court was particularly gratifying to the bar of the state in view of the series of opinions by the Supreme Court of the United States in recent months involving habeas corpus cases wherein petitioners were incarcerated in penal institutions

in the state of Illinois. In the recent case of Bute v. Illinois, 68 S. Ct. 763, the United States Supreme Court affirmed a decision of the Supreme Court of Illinois that an accused did not have a federal constitutional right to the appointment of counsel in a non-capital case where no unusual circumstances were present which would make the appointment of counsel a matter of due process. The Supreme Court of Illinois could have stood on the affirmance of its decision, but, to its everlasting credit, it adopted a rule at the next term of court which declared its intention that the administration of justice in Illinois was not to be bottomed on a minimum requirement of either the state or the federal constitution.

The rule was drafted by a joint committee of the Illinois State and Chicago Bar Associations at the request of the court made at its March, 1948, term. I am enclosing a copy of the rule for such use as you may see fit to make of it. [See below.]

The court also directed us to prepare for submission to it a rule governing post-conviction proceedings so as to make available to persons incarcerated in penal institutions in Illinois a ready and certain procedural remedy for the presentation of claims of denial to them of substantial state or federal constitutional rights. This phase of the matter has been a rather difficult task, but we have about completed our work and hope to submit a proposed rule to the court in the near future.

ALBERT E. JENNER, JR.

11 S. La Salle St., Chicago 3, Ill.

Rule 27A In all criminal cases wherein the accused upon conviction shall or may be punished by imprisonment in the penitentiary, if at the time of his arraignment the accused is not represented by counsel, the court shall, before receiving, entering or allowing the change of any plea to an indictment, advise the accused he has a right to be defended by counsel. If he desires counsel and states under oath he is unable to employ such counsel, the court shall appoint competent counsel to represent him. The court shall not permit waiver of counsel or a plea of guilty by any person accused of a crime for which upon conviction the punishment may be imprisonment in the penitentiary unless the court finds from the proceedings had in open court that the accused understands the nature of the charge against him and the consequences thereof if found guilty and understands he has a right to counsel and understandingly waives such right. The inquiries of the court and the answers of the defendant to determine whether the accused understands his rights to be represented by counsel and comprehends the nature of the crime with which he is charged and the punishment thereof fixed by law, shall be recited in and become a part of the common law record in the case; provided, in no case shall a plea of guilty be received or accepted from a minor under the age of eighteen years unless represented by counsel.

Worth Remembering and Repeating

Mr. George E. Brand:

I am deeply and vitally interested in every step taken looking to the improvement of the administration of justice, and I feel that there is very much which can be done in this direction. I believe that the American Judicature Society has accomplished much worth while in the matter of improving the administration of justice, and I have confidence that it will continue its efforts along this line. It is because of my belief and confidence in the work of the Society that I accept your invitation to become a member and make the small contribution herewith to the Society's work.

All my life I have believed, and I still so believe, that the greatest dangers to the institutions of freedom in this land lurk in the insidious encroachments made within and not from the enemies of such institutions from far off. I have further believed, and still do so believe, that the American judicial system is the greatest single bulwark against the enemies of freedom that bore from within. As long as we can keep honest, able and fearless judges on the benches of the American courts, with an eye single to the impartial administration of justice under the law, the bell of liberty will continue to toll in this land. But when and if the American courts become anemic, politicalized, fearful and subservient, either to the legislative or executive arms of the government, or to popular whims and fancies, then will be written with tragic swiftness the final chapter of what has been the world's greatest nation, a nation whose very existence has been dedicated to the preservation and perpetuation of liberty under law.

VICTOR V. BLACKWELL

Covington, La.

The Literature of Judicial Administration

BOOKS

The Case of the Nazarene Reopened, by Hyman E. Goldin. New York: Exposition Press, 1948. Cloth, 863 pp. $5.00.

This latest addition to the extensive literature dealing with the most famous of all criminal trials is of special interest because it is one of the small minority of works on that subject written by Jewish authors from the Jewish viewpoint. It consists entirely of the fictional record of an imaginary trial before "the Supreme Judge of the World and a jury of public opinion" of a case entitled "Christendom, plaintiffs, against Jewry, defendants, on indictment for murder, first degree," wherein the plaintiffs, represented by a fictional attorney called Mr. Pablo Christiani, accuse the defendants, represented by Mr. Hayyim Eliyahu ben Yehudah, of "having abetted and conspired in the brutal killing of our Lord Jesus Christ."

After brief opening statements by counsel, the witness St. Matthew takes the stand and submits to fifteen pages of direct examination, consisting of a question-and-answer recital of the account of the crucifixion and events leading up to it as told in the first of the four gospels, followed by sixty-three pages of cross-examination, wherein that testimony is minutely dissected and its inconsistencies and shortcomings shown up. The same is done with each of the other three gospels, after which the defense introduces fictitious expert witnesses in Jewish history, religion and jurisprudence, Roman law, exegesis and the Hebrew and Aramaic languages. They are examined and most of them cross-examined, and then "Mr. Ben Yehudah" presents a summation covering one hundred and thirty-four pages, followed by a six-and-one-half-page summation by "Mr. Christiani" and the judge's charge to the jury. The text ends with submission of the issue to the reader-juror.

Waiving his unaccountable error in casting a murder trial in the form of a civil action, with Christendom as plaintiff instead of complaining witness, the author, who is a lawyer as well as a distinguished rabbi and author, has done an excellent job of organizing his voluminous material in the form of a court record. It promotes the readability of what would otherwise tend to become a prosy recital of discrepancies in manuscripts and disputations on rabbinical lore, and the volume is worthy of thoughtful examination by the many to whom stories of famous trials are a fascinating diversion, and also by the uncouted millions of both Christians and Jews to whom, for religious and other reasons, the trial and crucifixion of Jesus was an event of transcendent importance.

An attempt to say whether or not the learned rabbi has made out his case would be out of place in this brief announcement. Judgment on that point should be reserved until after a thorough study of the text of the book and the one hundred and fifty-six pages of documentation, as well as some of the numerous Christian authorities on the same subject. Particularly foolish would it be to accept the pitiful statements of "Mr. Christiani" as representing the case of the Christians in this historic controversy, for they are phrased with the palpable object of making the Christian cause look as weak as possible, and "Mr. Christiani" commits the logical crime of begging the question on nearly every page, by insisting that divine inspiration of the gospels is proof of the veracity of their contents when that is part of the question at issue. Greenleaf, the great authority on legal evidence, in his scholarly *Examination of the Testimony of the Four Evangelists*, did not find it necessary to employ such reasoning to reach his conclusion in their favor.

Law in Action, edited by "Amicus Curiae." Introduction by Roscoe Pound. New York: Crown Publishers, 1947. Cloth, pp. xiv and 498. $3.00.

This delightful volume, reminiscent in many ways of Dean Wigmore's *Panorama of the World's Legal Systems*, bears a descriptive subtitle, "An anthology of the law in literature." It differs from the *Panorama* in that it does not attempt to draw an accurate picture of the administration of justice, but rather to gather together such portrayals of it as are to be found in the great literature of all peoples and all ages. No better indication of its range can be found than by noting that the first item is the trial of Jesus as recorded in the four gospels, and the last is the trial of the Knave of Hearts from

Lewis Carroll's *Alice in Wonderland*. Each is the original text or its translation.

The forty-three episodes are divided into four groups, classified as "Liberty," "Morals," "Justice" and "Crime." Contributions from Boccaccio and Rabelais enliven it, but none of it is dull reading.

The reader, says Dr. Pound, "will note in what a variety of ways the ideal relation among men has been sought for. He will perceive how differently attempts at administering justice whether according to law or without law have appealed to writers both in the past and in the present. He may observe how the layman has conceived he could solve the problems of adjusting relations and ordering behavior by simple offhand methods with little conception of the number and variety of interests which his supposedly common sense solutions ignore. Apart from the intrinsic interest of the situations and episodes and conditions which have been the theme of writers from antiquity to the present, from them and from the different ways in which they have been treated one may see something of how difficult is the task of law in maintaining the inner order of a politically organized society."

Eternal Lawyer: A Legal Biography of Cicero, by Robert N. Wilkin. New York: The MacMillan Company, 1947. Cloth, pp. xiv and 264. $3.00.

This work does not presume to compete with the many distinguished biographies of Cicero already on the world's shelves. It is not so much a chronicle of a person or a period as a consideration of Cicero's particular character and significance as a lawyer. The book was written with the hope that a professional interpretation might reconcile some of the diverse opinions concerning Cicero's influence and worth. It was further hoped that such a study might arouse an interest in the history of law and the purpose of the legal profession. The trends and problems of constitutional government today require a more thorough understanding of the evolution of our law and the function of lawyers. The brief flare of the Roman republic may be illuminating, and its tragic fate may be a timely warning if considered in the light of Cicero's counsel.—*From the author's preface.*

The Trial of Alvin Boaker, by John Reywall. New York: Random House, 1948. Cloth, 283 pp. $2.50.

Through this fictitious record of the trial of a federal judge for the murder of his wife, the author, a "successful, currently practicing attorney" writing under a pseudonym, has not only indulged his yen for fiction writing but also expressed in dramatic form his views as to many aspects of the administration of criminal justice in the courts.

ARTICLES

"Free Men and a Free Judiciary," by Alexander Wiley. Journal of the Missouri Bar, May, 1948, pp. 1, 108-111.

"Practical Aspects of Appellate Court Work," by Joy Seth Hurd. Journal of the Cleveland Bar Association, May, 1948, pp. 127, 136-40.

"Substance and Procedure in Judicial Rule-Making," by Thomas H. S. Curd. Fifth annual report, West Virginia Judicial Council. 36 pp.

"How to Woo and Win a Jury," by William J. McBrearty. Detroit Lawyer, April, 1948, pp. 73-4, 82.

"On the Rewards of Bar Association Activity," by Charles M. Lyman. Connecticut Bar Journal, March, 1948, pp. 53-63.

"Ideals and Canons of the Legal Profession," by William M. Wherry. New York State Bar Ass'n Bulletin, April, 1948, pp. 51-58.

"Prelegal Education," by Arthur T. Vanderbilt. The Bar Examiner, April, 1948, pp. 85-93.

"Integration of the Bar—A United Bar," by Harry Green. New Jersey Law Journal, May 6, 1948, pp. 161, 163.

"A Generation of Improvement of the Administration of Justice," by Roscoe Pound. New York University Law Quarterly Review, July, 1947, condensed in Case and Comment, March-April, 1948, pp. 37-40.

"The Law Degree as Education," by Howard Thomas Mitchell. The Lawyer and Law Notes, Winter issue, 1947-8, pp. 21-2.

A Symposium on State Administrative Procedure constitutes the entire January, 1948, issue of the Iowa Law Review, with articles by Augustus N. Hand, E. Blythe Stason, Ralph F. Fuchs, Albert S. Abel, Nathaniel L. Nathanson, Kirk H. Porter, J. C. Pryor, D. C. Nolan, Thomas B. Roberts, M. C. Herrick, Marion Hirschburg, Rex B. Gilchrist and Lehan Kent Tunks.

"Pre-Divorce Suit Conciliation," by Julius

H. Miner. Illinois Bar Journal, January, 1948, pp. 207-8.

"Disqualification for Bias of Judicial and Administrative Officers," by Joseph M. Godman. New York University Law Quarterly Review, January, 1948, pp. 109-141.

"What's Wrong with the Professions?" by Edward B. Wilcox, president, American Institute of Accountants. Colorado Bar Association Dicta, February, 1948, pp. 25-34.

"Probation: What It Can Do and What It Takes," by Henry P. Chandler. Federal Probation, March, 1948, pp. 11-16.

CASES

Moore v. *New York,* United States Supreme Court, October Term, 1947, No. 485, decided May .., 1948.

In a second attack upon the New York "blue ribbon" jury system, the Supreme Court reaffirms its favorable decision in Fay v. New York, 332 U. S. 261, with four justices again dissenting in a vigorous opinion by Mr. Justice Murphy. The following is from the dissent:

"The vice lies in the very concept of 'blue ribbon" panels—the systematic and intentional exclusion of all but the "best" or the most learned or intelligent of the general jurors. Such panels are completely at war with the democratic theory of our jury system, a theory formulated out of the experience of generations. One is constitutionally entitled to be judged by a fair sampling of all one's neighbors who are qualified, not merely those with superior intelligence or learning. Jury panels are supposed to be representative of all qualified classes. Within those classes, of course, are persons with varying degrees of intelligence, wealth, education, ability and experience. But it is from that welter of qualified individuals, who meet specified minimum standards, that juries are to be chosen. Any method that permits only the "best" of these to be selected opens the way to grave abuses. The jury is then in danger of losing its democratic flavor and becoming the instrument of the select few."

Lumbermen's Mutual Casualty Co. of Chicago v. *Independent Insurance and Banking Employee Union,* 75 N. L. R. B. No....., Jan. ....., 1948.

The opponents of the integrated bar who have been insisting for years that it amounts to a "closed shop" lawyers' union at last have the privilege of seeing a real lawyers' union in action. Its members are a dozen attoreys employed by Lumbermen's, who, despite their employer's contention that they are officers of the courts, holders of a public trust, have fiduciary duties and represent management, have won through the above decision the right to organize as a union and bargain collectively. The New York State Bar Association's Lawyer Service Letter comments:

"Whatever may be said in support of the Board's holding, it is sad to contemplate a group of attorneys desiring to bargain collectively. A lawyer ought to be proud of his individuality and to guard it jealously."

The physicists, engineers and chemists have been much in the news in late years. Our tremendous recent advances in the physical sciences which produced radar, the atomic bomb and the betatron for the exploration of nuclear energy have as times blinded us to an unmistakable decadence in the vitality of fundamental social, political and legal thinking. The building of better, new and unbelievable things is indeed a barren success if man may use those things only in chains or in a desert of political chaos. I firmly believe that our statesmen, legislators, government and industrial executives must in the future look with increasing conviction to the legal profession for that leadership which will permit us to live in constructive peace and prosperity with these Frankenstein monsters our scientists have built.—*Dean L. Dale Coffman.*

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We ought to ask ourselves whether the high quality of our judges is because of our method of selection or in spite of it. If the latter, the demand for improvement ought to be automatic and spontaneous.—*Charles M. Lyman.*